

In an action to recover the tax paid by the petitioner under the two assessments in controversy, the District Court held (1) that irrespective of any waiver the term of limitation ran from the date of the additional return, and (2) that the waivers were valid and binding. 3 F. Supp. 508. On the authority of decisions in the Ninth Circuit (*Zellerbach Paper Co.* and *National Paper Products Co. v. Commissioner*, 69 F. (2d) 852, 857), the Court of Appeals for the Fourth Circuit affirmed ruling No. 1 and did not pass upon the correctness of ruling No. 2. 70 F. (2d) 102.

For the reasons stated in our opinions in Nos. 37 to 39, and in Nos. 35 and 36, the first ruling is erroneous. The second ruling we do not consider, the question of the validity of the waivers being still open for determination in the court below.

The decree should be reversed, and the cause remanded to the Court of Appeals for the Fourth Circuit for further proceedings in accordance with this opinion.

Reversed.

ABRAMS ET AL. *v.* VAN SCHAICK, SUPERINTENDENT OF INSURANCE, ET AL.

APPEAL FROM THE SUPREME COURT OF NEW YORK.

No. 186. Argued November 12, 1934.—Decided November 19, 1934.

A judgment of a state court refusing to enjoin proceedings under a state statute alleged to be unconstitutional does not present a substantial federal question when the outcome of those proceedings, if pursued, and its effect upon the federal rights asserted by the complainant, are matters of conjecture.

Appeal from 264 N. Y. 475, dismissed.

APPEAL from a judgment, entered on remittitur, which reversed an injunction order of the Supreme Court of New York (150 Misc. 467) and denied the injunction.

Messrs. Samuel Untermeyer, James M. Beck, and Edward Endelman submitted for appellants.

Mr. Morris L. Ernst, with whom *Messrs. Lawrence S. Greenbaum* and *Benjamin Kaplan* were on the brief, for Van Schaick, appellee.

Mr. Samuel Kramer for Silverberg, appellee-intervener.

By leave of Court, *Mr. John J. Bennett, Jr.*, Attorney General, and *Mr. Henry Epstein*, Solicitor General, filed a brief on behalf of the State of New York, as *amicus curiae*.

PER CURIAM.

The Court of Appeals of the State of New York reversed an order of the Special Term of the Supreme Court which enjoined the Superintendent of Insurance from making any payments for expenditures incurred in connection with plans of reorganization promulgated under Chapter 745 of the Laws of 1933 relating to guaranteed participating certificates sold by the New York Title and Mortgage Company. The motion for injunction, denied by the Court of Appeals, was made in advance of the promulgation of a plan by the Superintendent of Insurance applicable to the interests of the appellants. Whether, if a plan of reorganization is promulgated by the Superintendent of Insurance it will be approved by the Court as required by the statute, or whether, if so approved, it will be opposed by certificate holders, or will receive the assent of the present appellants, or will operate to deprive them of any asserted constitutional right, are matters of conjecture.

The appeal is dismissed for the want of a substantial federal question. *Liverpool, N. Y. & P. S. S. Co. v. Commissioners of Emigration*, 113 U. S. 33, 39; *California v.*

Per Curiam.

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San Pablo & Tulare R. Co., 149 U. S. 308, 314; *Stearns v. Wood*, 236 U. S. 75, 78; *Cincinnati v. Vester*, 281 U. S. 439, 449.

Dismissed.

E. R. SQUIBB & SONS *v.* MALLINCKRODT CHEMICAL WORKS.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 42. Argued November 7, 1934.—Decided November 19, 1934.

Where an appeal is properly before the Circuit Court of Appeals and, upon hearing it, the court determines that such assignments of error as have been duly filed have been abandoned, the court may affirm the decree.

QUESTIONS certified by the court below after it had affirmed an interlocutory decree enjoining infringement of the plaintiff's patent, see 69 F. (2d) 685, and after a petition for rehearing had been filed.

Mr. Frederick H. Wood for E. R. Squibb & Sons.

Mr. Frank Y. Gladney, with whom *Mr. Lawrence C. Kingsland* was on the brief, for Mallinckrodt Chemical Works.

PER CURIAM.

The Circuit Court of Appeals has certified the following questions:

“Question 1. Where, on an appeal properly in this court, the appellee contends that one of the assignments of errors has been abandoned and all others are not presentable because defective either as assignments of errors or as specifications of errors and urges affirmance of the decree appealed from and this court determines that such contention is well founded in all respects and that no issue on the merits is, for such reasons, presentable to it, is it proper to affirm the decree appealed from?”